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James D. Harding.

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JAMES D. HARDING.

APRIL 4, 1834.

Read, and laid upon the table.

Mr. E. WHITTLESBY, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to which was referred the petition of James D. Harding, report:

That a contract was made by and between the United States, by James R. Stephenson of the one part, and the said James D. Harding of the other part, on the 2d day of November, 1832, by which the said James D. Harding covenanted to deliver two thousand bushels of corn in the cribs at Horse Prairie, of that year's growth, for the emigrating Indians, of which five hundred bushels were to be delivered on or before the 1st day of December, 1832, five hundred bushels on or before the 1st day of January, 1833, and one thousand bushels on or before the 1st day of February, 1833. The United States were to pay for the first 500 bushels \$1 43 $\frac{1}{2}$ per bushel, and for the remaining 1,500 bushels the sum of \$1 40 per bushel.

In case of a failure to deliver, the agent was authorized to purchase, and charge any loss to the contractor, which he agreed to pay.

The 4th article is as follows, to wit: "That the United States will be responsible for no accidents arising under or growing out of the foregoing stipulations."

The petitioner asks to be remunerated the loss he sustained on the 7th of November, 1832, by the sinking of his keel boat called the Manager, when descending the Red river, with eight hundred bushels of corn, to deliver in part performance of said contract, by which accident he lost the boat and cargo, when within twelve miles of the Horse Prairie. The sinking of the boat and the loss of the cargo are proven by several witnesses.

Lieutenant James R. Stephenson, in a letter addressed to the Hon. A. H. Sevier, states that there was a combination at the public bids to make the United States pay high prices for said corn, but into which Mr. Harding did not enter; and he says the corn was procured for much less than it would have been, had not Mr. Harding become a bidder; and that his conduct had a salutary influence on future contracts in that section of the country. He expresses a hope the claim may be allowed. The petitioner and others state, a refusal to grant relief will greatly embarrass the petitioner, if not wholly ruin him.

To grant relief in this case would establish this principle: that the United States are holden or bound, in justice, to become the insurers of all property in transitu, that the numerous contractors for delivering materials or supplies have in their possession designed to be delivered. The committee could not sanction a principle so unjust. They conceive the precaution contained in the 4th article cited was wholly unnecessary; but it appears that the question of risk was settled between the parties, and, for fear some claim might be raised against the United States if an accident occurred, it was expressly agreed that they were not, from any cause whatever, to be made liable. To grant relief would violate the contract as well as principle.

The committee submit the following resolution:

Resolved, That the prayer of the petitioner ought not to be granted.

To the honorable the Senate and House of Representatives in Congress assembled:

The petition of the undersigned respectfully represents, that your petitioner, on the second day of November, in the year of our Lord one thousand eight hundred and thirty-two, entered into a contract with Lieutenant James R. Stephenson, of the United States army, disbursing agent in the removal and subsistence of Indians, for and on behalf of the United States of America, for the delivery of two thousand bushels of good, sound, merchantable corn at the depot at Horse Prairie, on Red river, for the sum of one dollar and forty-three and three-fourths cents per bushel. (A copy of which contract is hereunto annexed.) Your petitioner represents that, in order to comply with his contract as speedily as possible, he put on board of the keel boat Manager, at Pecan Point, on Red river, eight hundred bushels of good, sound, merchantable corn, for which your petitioner agreed to pay the sum of one dollar per bushel, and proceeded on his voyage to Horse Prairie; and on the 7th of November, and within twelve miles of the place of destination, the boat of your petitioner struck a sawyer and filled with water, and in a few minutes sunk to the bottom, and thereby both boat and cargo were totally lost to your petitioner. Your petitioner represents that his boat and cargo were lost by unavoidable and unforeseen accident, and that the sawyer upon which his boat was wrecked, could not be seen by the persons having the management of the boat; and your petitioner represents that he used every means in his power to save his boat and cargo, without effect.

Your petitioner also represents, that at the time he entered into said contract, he was not aware of the many difficulties and dangers which he would have to encounter in navigating Red river above the mouth of the river Kearnichla. Your petitioner further represents that the keel boat Manager was in good repair, and that she was worth five hundred dollars, and that he is under contract to pay eight hundred dollars for the said eight hundred bushels of corn, and that the freight of the said cargo from Pecan Point to the place where the boat sunk, was worth two hundred dollars; making, in the whole, a total loss to your petitioner of fifteen hundred dollars. Your petitioner represents, that in consequence of this loss, he will be much injured, if not entirely ruined, in a pecuniary point of view. Your petitioner, therefore, respectfully asks your honora-

ble bodies to pass a law for his relief, remunerating him for losses sustained by unavoidable and unforeseen accident in endeavoring to perform his contract with the Government; and your petitioner, as in duty bound, will ever pray, &c.

JAMES D. HARDING.

January 8, 1833.

The undersigned are well acquainted with James D. Harding, the signer of the foregoing petition, and believe him to be an honest, correct, enterprising, and industrious young man, and on whose statements we can rely. Mr. Harding has just commenced the world with but a small capital, from which he has to support his young and growing family. The undersigned believe that the losses sustained by Mr. Harding, as set forth in his petition, will materially injure him, if not entirely disqualify him to meet his engagements with citizens. The undersigned are satisfied that Mr. H.'s boat and cargo were lost by unavoidable accident, and that he made use of every means in his power to preserve from total loss his said boat and cargo. The undersigned are aware that one dollar per bushel was the current price for corn at Pecan Point, delivered on the bank of Red river, and that the keel boat Manager was one of the most substantial boats on the river.

JAS. R. STEPHENSON, *Lt. U. S. Army.*

WM. M. K. BALL, *Assist. Agent Choc. Rem.*

SAMUEL B. MARSHALL.

JOHN HENRY.

GEORGE F. LAWTON.

Articles of agreement made on the 2d day of November, eighteen hundred and thirty-two, between Lieutenant James R. Stephenson, of the United States army, disbursing agent in the removal and subsistence of Indians; of the one part, and James D. Harding of the other part.

This agreement witnesseth that the said Lieutenant James R. Stephenson, for and on behalf of the United States of America, and the said James D. Harding, for himself, his heirs, executors, and administrators, have mutually agreed, and by these presents do mutually covenant and agree, to and with each other, in manner following, to wit :

1st. That the said James D. Harding shall deliver in the cribs at Horse Prairie five hundred bushels of good, sound, merchantable corn, of the present year's growth, on or before the first day of December, 1832; five hundred bushels on or before the first day of January, 1833; and one thousand bushels on or before the first day of February, 1833.

2d. That for every bushel of corn thus delivered and accepted, the said James D. Harding shall be paid as follows, viz. For the first five hundred bushels, the sum of one dollar and forty-three and three-fourths cents per bushel, and for the remaining fifteen hundred bushels the sum of one dollar and forty cents per bushel.

3d. That in case of failure or deficiency in the quantity or quality of the corn to be delivered, then the agent on the part of the United States shall have power to supply such deficiency by purchase; and the said James D. Harding hereby agrees to remunerate the United States for any increase of expenditure consequent thereon.

4th. That the United States will be responsible for no accidents arising under, or growing out of the foregoing stipulations.

In witness whereof, the parties have hereunto placed their hands and seals, the day and date above written.

JAMES R. STEPHENSON, [SEAL.]
Lt. U. S. Army, Disb. Agent Rem. and Sub. Indians.
 JAMES D. HARDING. [SEAL.]

Witnesses :

P. M. KINLEY.

J. PENNEY.

FORT TOWSON, *January 8, 1833.*

I do hereby certify that the foregoing is a true copy of the contract entered into between James D. Harding and myself, the original remaining on file in my office.

JAMES R. STEPHENSON,
Lt. U. S. Army, Disb. Agent Choc. Rem.

FORT TOWSON,

Choctaw Nation, West, January 12, 1834.

SIR : At the request of James D. Harding, of Miller county, Arkansas Territory, I have taken the liberty of addressing you on the subject of the loss of his keel boat and load of corn in the fall of 1832, in attempting to deliver the same at the Horse Prairie depot, for the use of the emigrant Choctaws. In relation to this matter, I will state that, previous to the collection of crops in the fall of 1832, I was duly authorized to enter into contracts for supplying the several depots on Red river, for the use of the Choctaw emigrants. On opening the bids for supplying as above, it was evident, from the prices stated in them, that there was a combination formed to obtain enormous prices : the bids were accordingly, with one exception, rejected. Mr. Harding, as far as I have been able to ascertain, was not concerned in this combination. On the same day the bids were rejected, or the day succeeding, Mr. Harding made to me propositions to supply a portion of what was required, and on such terms as I considered reasonable and just ; his proposition was accepted and complied with entirely to my satisfaction, notwithstanding, in accomplishing his contract, he met with the loss of his boat and load of corn. I will here give it as my belief that the fact of Harding's furnishing on reasonable terms destroyed the combination above alluded to, and probably saved the Government double or treble what would compensate him for the loss of corn and boat. I sincerely hope you will use your influence in obtaining for him such relief as the Government in their liberal feelings may be willing to bestow.

I am, sir, most respectfully,
 Your obedient servant.

JAMES. R. STEVENSON,
Lieutenant United States Army.

To the Hon. A. H. SEVIER,
Washington City, D. C.

FORT TOWSON, WEST OF ARKANSAS TERRITORY,

November 26, 1832.

SIR: Yours under date of the 7th instant, respecting the loss of your boat and corn, has been received.

It was with extreme regret I heard of the loss of your boat and cargo after having arrived so near her destination; but I am still in hopes you will continue to use that perseverance and industry to fill your contract which you have formerly done. Any measures that may be in my power to adopt, calculated to remove the loss of your boat and cargo from your shoulders, will be willingly done; in pursuing this course, I know of nothing that will forward your views more than to state that you have used every exertion in your power to fulfil your contract, and at a fair and reasonable price, and that your boat was within a few miles of its destination when the accident occurred. Although I am fearful the latter clause in your contract will prevent the Government from admitting any relief, I nevertheless would test the point, and I believe, if you can show that your boat was lost (whilst using every exertion to comply with your contract) by reason of impediments or obstructions heretofore unknown, or from any cause, except neglect, not to have been anticipated when you made the contract, that the Government will be willing to afford relief, in whole or in part.

I would recommend that you make your claim on Government through the Delegate of Arkansas Territory, and, in making out your account, make the original cost of your corn, or the market price at home, and the cost of transportation to the point your boat was lost, separate items.

Yours respectfully,

JAMES R. STEPHENSON,

Lieutenant U. S. Army.

JAMES D. HARDING, *Red River, A. T.*

I, Travis G. Wright, do hereby certify that James D. Harding purchased of me, some time in November, 1833, on the bank of Red river, about five hundred bushels of corn, for which he paid me one dollar twelve and a half cents per bushel, which was shipped on a keel boat called the *Manager*, a strong and substantial boat, bound for Horse Prairie landing, together with about three hundred bushels purchased of other persons, which was lost, together with the boat, by being sunk by the accident of striking a snag.

TRAVIS G. WRIGHT.

Sworn and subscribed to before me, this 11th January, 1834.

J. W. GREEN, *J. P.*

TERRITORY OF ARKANSAS, *Miller County.*

I do hereby certify that James W. Green, Esq., whose name appears to the above affidavit, is an acting justice of the peace for said county, and that due credit and faith should be given to all his official acts.

In testimony whereof, I do hereby set my hand, and affix my private seal of office, there being no public seal as yet provided for this county.

Done at office in the town of Jonesborough, the thirteenth day of January, in the year one thousand eight hundred and thirty-four, and of the independence of the United States the 58th year.

[L. s.]

N. G. CRITTENDEN,

Clerk of Miller County.

Per J. W. GREEN, *Deputy Clerk.*

JONESBOROUGH, Arkansas Territory.

We, the undersigned, James B. Anderson and Harry C. Weaver, do hereby certify that we were on board the keel boat Manager, on her way to Horse Prairie, loaded with corn for the agent of the United States Government, when she struck a sawyer by some unforeseen accident, and was immediately lost, notwithstanding every exertion was used by the owner of the corn, the contractor, James D. Harding, to no effect.

JAMES B. ANDERSON.

HARRY C. WEAVER.

Sworn to and subscribed before me, James W. Green, an acting justice of the peace.

J. W. GREEN, *J. P.*

January 11, 1834.

TERRITORY OF ARKANSAS, Miller County.

I do hereby certify that James W. Green, Esq., whose name appears to the above affidavit, is an acting justice of the peace for said county, and that due credit and faith should be given to all his official acts.

In testimony whereof, I do hereby set my hand and my private seal of office, there being no public seal of office as yet provided for this county.

Done at office in the town of Jonesborough, the thirteenth day of January, one thousand eight hundred and thirty-four, and of the independence of the United States the 58th year.

[L. s.]

N. G. CRITTENDEN,

Clerk of Miller County.

Per J. W. GREEN, *Deputy Clerk.*

TERRITORY OF ARKANSAS, Miller County.

This day personally appeared before me, James W. Green, an acting justice of the peace for the county aforesaid, and, after being duly sworn, depose that they, Wm. R. Revere and John McComac, were on board of the keel boat Manager, a strong and substantial boat, when she was lost, and cargo of corn, by some unforeseen accident, and every exertion was used to preserve her, without effect, from total loss; and the deponents further say not.

WM. R. REVERE.

his

JOHN McCOMAC.

mark

Subscribed and sworn to before me, this 14th December, 1833.

J. W. GREEN, *J. P.*